



THE LEGAL MAGAZINE FROM THP SOLICITORS | ISSUE 5 | 2023

NIL RATE BAND THE INHERITANCE TAX AND RESIDENCE

NIL RATE BAND EXPLAINED

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WELCOME TO IN BRIEF - THE LEGAL MAGAZINE **FROM THP SOLICITORS**

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Welcome to the latest edition of our THP Solicitors magazine, IN BRIEF. As global events and economic pressures keep the world as unpredictable as ever, at THP we are determined to help our clients have some stability and control over their private and business lives in a legal context.

In this issue of IN BRIEF, we explain the different inheritance tax thresholds, the Section 21 process for landlords who wish to regain possession of their property, option agreements for development land, how pensions are treated at divorce, the importance of shareholder agreements and how completing a property purchase before the SDLT 2025 could save home buyers thousands of pounds. As always, we hope you enjoy the magazine and please do get in touch if you would like any more information on any of the topics mentioned.

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THP ADDS TO ITS TALENT POOL

In response to increases in work volumes, THP has continued its expansion, recruiting a number of new staff including Deborah Clark. Deborah qualified as a Legal Executive in 2012 and specialises in the preparation of Wills, lasting power of attorney and all aspects of probate work, including the administration of complex estates.

Solicitor Sara Dixon has joined our Residential Property team. She has 20 years' experience in handling a wide range of residential property transactions including sales and purchases, re-mortgages, transfers

of equity, non-statutory lease extensions, defects in title and new builds.

We are also pleased to announce that Karen Aujla, a qualified solicitor who supports our Wills, Trusts & Estate Administration team in Henley, has qualified as an independent qualified notary public. She can provide a wide range of notarial services to individuals and businesses, including arranging for documents to be legalised at the Foreign, Commonwealth and Development Office and for any further legalisation at consulate/ embassy level.

THP SHORTLISTED FOR BEST LAW FIRM



Property Awards, which was a testament to the hard work of our Commercial Property team and reflects the quality and range of property transactions we complete for our clients.

and how they helped clients

We were delighted that THP Solicitors was shortlisted for Best Law Firm at the Royal Berkshire

CHECK OUT OUR LATEST PODCASTS!

We have recorded two new podcasts Settlement Agreements, why and to add to our series. In each 10-minute episode, we cut through the legalese to informally discuss topical issues and answer common questions.

Settlement Agreements - What **Employees and Employers Should** Know: Laura Colebook talks about

how they are used, and what should be considered when drafting and/or signing one.

The Conveyancing Process Step by Step: Denise Stradling explains the various stages of the conveyancing process when you buy or sell a property.



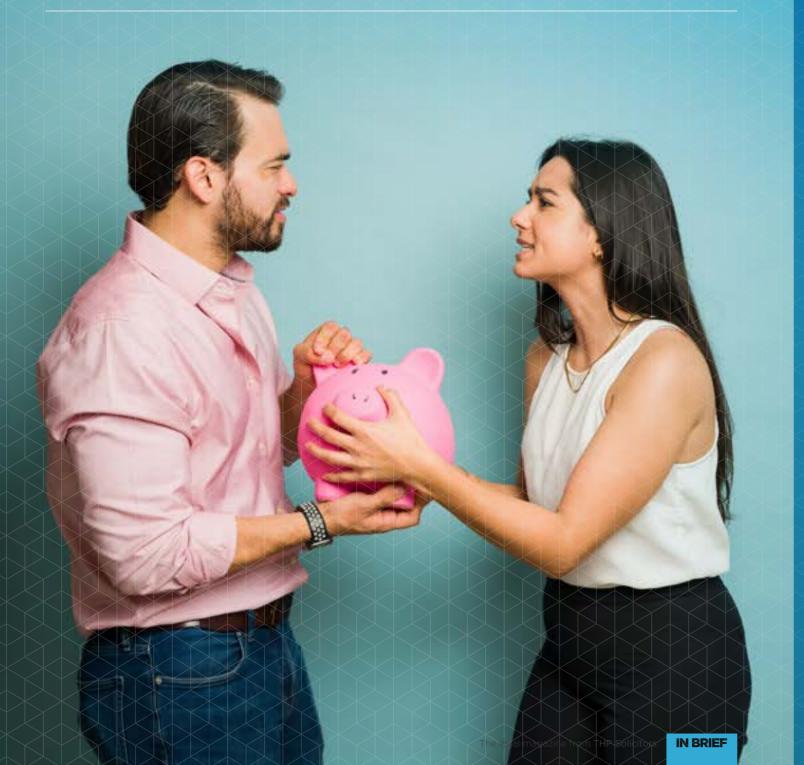
Law firms who made the shortlist had to demonstrate the breadth and depth of the work they had completed in the Berkshire market, complete successful transactions.

Our firm has an established reputation for providing a comprehensive real estate legal service, working collaboratively with property owners, developers, investors, landowners, landlords and tenants on all aspects of real estate in Berkshire and beyond.



FAMILY FAQS

AM I ENTITLED TO SOME OF MY SPOUSE'S PENSION IF WE DIVORCE?



When addressing financial matters in a divorce it is important to remember that private or workplace pensions are considered part of the matrimonial assets and can often form quite a significant share of "the pot". It is therefore vital to include pensions in any discussions about finances during your divorce.

To do this you need to know how much any existing pension(s) are worth, by asking the pension provider for a cash equivalent transfer value (CETV). It is important to note that pensions are not the same type of asset as cash and in most cases, it is not as simple as adding up all pensions and dividing by two to work out how much each person should receive. It is for this reason that we often advise that a pension on divorce expert (PODE) is instructed by couples jointly to assist with these calculations. There are many factors that need to be considered when dividing pensions, not least whether it is a defined contribution or defined benefit (final salary) pension.

Whilst the starting point in a divorce's financial settlement might be an equal division of assets, when considering the finances, the Court takes into account various factors such as each person's respective financial needs, their ages, their income and financial resources, the length of the marriage and the contributions that have been made by each person. As a result, a 50/50 division of finances might not be appropriate.

There are also different ways that a pension can be divided between parties to accommodate different circumstances. For example, one person may receive more capital from the family home in return for the other person retaining more of their pension (this is known as "offsetting").

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Many people believe that as a pension has been accumulated by one person it does not form part of the matrimonial assetsassets, but this is not the case. The Court will not financially penalise a person for not working and thus not contributing to a pension fund, particularly in circumstances where, for example, one parent may have given up work to care for the children of the family.



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WHAT ORDERS CAN THE COURT MAKE IN RELATION TO PENSIONS?

- Pension Sharing Order If a pension sharing order is made, this allows the court to divide a pension between spouses by giving a percentage of one person's pension to the other. This will be transferred to either an existing or new pension in that person's name. This allows for a clean break and means that each person's pension remains entirely separate, eliminating any future issues or claims.
- Pension Attachment Order A pension attachment order provides for a percentage of one person's pension to be paid to the other, once it becomes payable to the original holder of the pension. This is therefore similar to maintenance payments. This means that once the original pension holder starts receiving their pension, a specified amount will be paid to the other spouse. This continues until either the receiving spouse remarries, or the original pension holder dies.

HOW WE CAN HELP

Pensions are often overlooked by divorcing couples but can be of significant value, particularly in cases where there has been a long marriage and/or children. It is therefore recommended that legal advice is received from the outset. If you'd like to talk about pensions, or finances upon divorce in general, then please contact our Divorce & Family team at our Lower Earley office on T: 0118 975 6622 or our Henley office on T: 01491 570 900.

SHAREHOLDER AGREEMENTS

HOW AND WHY THEY ARE USED



A Shareholders' Agreement is a private agreement between shareholders, regulating the relationship between the shareholders and how the company is governed. This can impact how certain key decisions will be made in a variety of scenarios.

The majority of Shareholders' Agreements will hopefully spend most of their life in a filing cabinet after drafting. However, they should not be overlooked as key commercial documents for anyone setting up or investing in a limited company. Their clear and concise terms

Without Shareholder Agreements, companies may find themselves embroiled in costly litigation or grind to a halt altogether...

and processes give much-needed protection and transparency to shareholders if a dispute arises or an unexpected event such as divorce or death occurs, and the issue of what happens to shares arises.

Without Shareholder Agreements, shareholders may find themselves embroiled in costly litigation or grind to a halt altogether, being bound by rules and regulations determined by the Company's Articles of Association - which may not be appropriate to the specific relationship between the shareholders.

DEATH OF A SHAREHOLDER

The death of a shareholder can cause a great deal of disruption and uncertainty in a company and without a Shareholder Agreement in place, the transfer of a deceased shareholder's shares may be lengthy and complicated to achieve. Shareholders' Agreements can include a several specific and bespoke provisions in relation to a deceased shareholders' shares, which enable existing shareholders to determine the movement of shares in specific circumstances, notwithstanding the general rules laid down by the Articles of Association.

Pre-emption rights offer the surviving shareholders a right of first refusal to buy the deceased shareholder's shares. Conversely, permitted transfers allow shares only to be transferred directly on death to a restricted group of individuals (typically family members) thereby avoiding the pre-emption rights provisions. These are the types of provisions which can be included in shareholder agreements, especially for unique circumstances.

Compulsory transfers can force the shares to be sold upon death allowing the company to buy back the shares or sell to existing shareholders or other specified individuals. Compulsory transfers could mean the deceased shareholder's shares will be offered to the surviving shareholders and if they decline, the shares can be offered to others. A Shareholder's Agreement gives you flexibility as to appropriate arrangements.

Cross-option agreements work by enabling each shareholder to grant the right to the other shareholders to buy their shares upon their death. It also gives the personal representatives the right to require the other shareholders to buy the deceased's shares. Cross-option agreements can also be drafted so the company purchases the deceased's shares rather than the other shareholders.

DIVORCE

It is not uncommon for company shares to be a point of dispute between spouses during the divorce process. A compulsory transfer provision within a company's Shareholders Agreement may deter a court from making share transfer orders on divorce as it would raise concerns about implementation and enforcement. Without such provisions, a company is left wide open to a plethora of issues.

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SHAREHOLDER LEAVING A COMPANY

A Shareholders' Agreement can include various options for shareholders if another shareholder wishes to sell their shares, e.g. if they wish to leave the company. For example, further pre-emption rights. If the existing shareholders do not take up their right to purchase such shares, provisions in the agreement can prevent a transfer taking place without shareholder approval. Such provisions can help prevent shares from falling into the wrong hands. Shareholder Agreements can also apply different rules to shareholders leaving as either a good or bad leaver.

SHAREHOLDER AGREEMENTS FOR **50/50 COMPANIES**

Shareholder Agreements are particularly important for companies with only two shareholders where each owns 50% of the share capital and they are the only directors of

the company. Such companies are known as "deadlock companies" because if the shareholders have a dispute which they cannot resolve, neither has a sufficient shareholding to push through the decisions. This has the potential to create huge difficulties and can bring the company to a standstill. Such issues can be avoided if the parties enter into a Shareholders' Agreement containing well drafted provisions setting out a process to be followed if such a deadlock occurs. This is by far easier and cheaper than the costs of engaging lawyers to unlock the stalemate or having to take the matter to court for resolution.

MAJORITY OR MINORITY SHAREHOLDER RIGHTS

Shareholders' Agreements can be used to protect minority, majority and equal shareholders alike. An agreement can include "drag along rights" which are rights for majority shareholders to accept an offer to buy their shares, and which compel the remaining minority shareholders to accept such an offer. The opposite of this is the inclusion of "tag along rights" which enable minority shareholders to compel majority shareholders who wish to sell their shares to procure an offer for the minority shares as well.

HOW WE CAN HELP

It is always necessary to consider the Shareholder Agreement as a whole to ensure it strikes a balance between being fair to shareholders without reducing the value of a shareholding or having a detrimental effect on the trading of the company. If you are interested in having a Shareholders' Agreement drawn up please contact Sanjay Soni in our Commercial team on E: S.Soni@thpsolicitors.co.uk or T: 01491 570909

NIL RATE BAND

THE INHERITANCE TAX AND RESIDENCE NIL RATE BAND EXPLAINED

There has been much talk about the **INHERITANCE TAX** government's rumoured scrapping of inheritance tax (IHT) at a cost to the Treasury of up to £7bn a year.

However, until and unless this pledge turns into policy, the current inheritance tax thresholds remain in force. Known as the nil rate band (NRB) and the residential nil rate band (RNRB) we look at how these tax thresholds affect the inheritance tax payable on estates.

When a person dies, Inheritance Tax is levied at 40% on the value of their estate over the inheritance tax threshold, known as the nil rate band (NRB), and on certain gifts made during their lifetime. The NRB currently stands at £325,000 and can be set against all asset types.

NIL RATE BAND (NRB)

If a husband or wife leaves their estate to their surviving spouse, their estate qualifies for 100% exemption so no tax will be payable. If there is an amount of the NRB that is unused it can be transferred Her available threshold would to the survivor of the marriage or civil partnership to

the value of the nil rate band available on their death. The transferable NRB is available to survivors of a marriage regardless of when the first spouse died.

FOR EXAMPLE:

Alan dies leaving an estate worth £600.000. He leaves £130.000 to his children and the rest to his wife Sandra. The threshold at the time Alan died was £325,000. The £130,000 left to the children would use up 40% of the NRB threshold, leaving 60% unused. When Sandra dies, the threshold is still £325,000. increase by the unused 60% of of Alan's NRB, so if Sandra's estate is not worth more than £520,000 (Sandra's £325,000 plus Alan's £195,000) there'll be no Inheritance Tax to pay when she dies.

If Sandra owns a property that was her home, she can increase this even further...

RESIDENTIAL NIL RATE BAND

The residence IHT nil rate band (RNRB) originally came into effect for deaths on or after 6 April 2017 at a level of £100,000 and was increased every tax year by an additional £25,000, reaching £175,000 for the 2020/21 tax year where it has remained frozen. It could save an estate up to £70,000 in inheritance tax.

A surviving spouse may be entitled to an increase in the residence nil rate band if the spouse who died earlier has not used, or was not entitled to use, their full residence nil rate band. This transfer does not happen automatically and has to be claimed via a request to the HMRC within 2 years of the death of the surviving spouse or civil partner. The calculations involved are potentially complex, but the increase could result in a doubling of the residence nil rate band for the surviving spouse.

The RNRB is essentially a 'top up' to the NRB to £500.000 (£325.000 + £175,000) in respect of one residential property but as is often the case. there are restrictions which include:

- The residential property must pass on death to 'lineal descendants' i.e. children, stepchildren, grandchildren, greatgrandchildren, or a spouse of a lineal descendant.
- The relief is only available for a property which has been the person's residence whilst it was part of the person's estate.
- A person must have owned an interest in the property at the date of their death. If they previously owned a property, but sold it before their death, they must have owned that interest in a residence on or after 8 July 2015.

• There is tapered withdrawal of the residence nil rate band for estates with a net value of more than £2 million (after deducting any liabilities but before reliefs and exemptions). The residence nil rate band is reduced by £1 for every £2 that the amount exceeds the £2 million threshold.

This means that married spouses and civil partners who own residential property, are now able to gift up to £1 million to their direct descendants with no inheritance tax payable on their estate. However, whilst the residence nil rate band is welcomed by many, with the high cost of property prices, some couples may still need to consider lifetime gifts or trusts to reduce estates below the £2m threshold.

IN BRIEF

The calculations involved are potentially complex, but the increase could result in a doubling of the residence nil rate band for the surviving spouse.

HOW WE CAN HELP

Inheritance tax planning can be complex and should be tailored to your specific situation, considering your personal circumstances and aspirations. Other taxes need to be considered carefully but there can be scope for substantial savings which may be missed if professional legal advice is not sought.

Contact our Wills, Trusts & Estate Administration team on T: 0118 975 6622 (Lower Earley) or T:01491 570 900 (Henley), to see how we can help with drafting a Will and estate planning to minimise any tax liabilities.

SECTION 21

THE PROCESS LANDLORDS MUST FOLLOW TO **REPOSSESS THEIR PROPERTY USING SECTION 21**

The number of private landlords issuing court claims to evict their tenants under Section 21 is up 35% in a year. Ironically, this increase has been partly attributed to the government's plan to abolish Section 21 agreements, which enable private landlords to repossess their properties from assured shorthold tenants without having to establish fault on the part of the tenant, hence it is sometimes referred to as the 'no-fault' ground for eviction.

This Section 21 change, together with a less tax-friendly environment and high mortgage interest rates, have led property - this is called a to many landlords exiting the private rented sector market as they fear it is no longer viable.

Unfortunately for many existing tenants, the government's move to make renting more secure for them in the long term by abolishing Section 21, has meant many are having to leave their homes in the short term as landlords sell up. This means not only will tenants have to deal with the upheaval of moving, but they will be entering a rental market with high rents driven by inflation and a shortage of available properties as private landlords leave the market. Because of this, many tenants are struggling to find alternative accommodation, and landlords are having to resort to the courts in order to evict them.

A landlord can issue a Section 21 notice if their tenant has an assured shorthold tenancy, provided that it is not within the first four months of the tenancy or before a fixed term has ended. A landlord cannot serve a Section 21 notice to seek possession

...many tenants are struggling to find alternative accommodation and landlords are having to resort to the courts in order to evict them.

after the tenant has complained about the state of repair of the 'retaliatory eviction'.

For a Section 21 notice to be valid, the landlord must have fulfilled various criteria during the tenancy including:

- If the tenant paid a deposit, the landlord must have paid it into one of the 3 approved **Tenancy Deposit Schemes within** 30 days of receiving the money and have provided the prescribed information to the tenant.
- The landlord must have provided the following to the tenant:
- a gas safety certificate dated no more than 12 months old (and this needs to be renewed annually).
- an energy performance certificate that is still valid at the time the S21 is served.
- the latest version of the 'How to Rent' guide in hard copy or emailed if the tenant agreed to accept electronic documents.
- The landlord should complete a Section 21 Notice and have proof of service.

The tenant will have 2 months' notice to vacate the property from the date they received the Section 21 notice. If the tenant has not left the property at the end of this period, the next step is for the landlord to apply to the court for possession. At this point the landlord has a choice of two routes:

- A standard possession order, which also enables the landlord to claim unpaid rent.
- An accelerated possession order but the landlord cannot claim rent arrears.

As in this scenario, as we are looking at a no-fault possession. we will continue down the accelerated possession route which is normally much quicker as it does not require a court hearing.

To make a claim for possession using the accelerated route, a landlord must:

- · Correctly complete the 20-page Form N5B.
- Supply a copy of the Tenancy Agreement(s)
- Supply a copy of the Section 21 notice and proof of service.
- Provide proof that a tenancy deposit has been registered in an authorised scheme.
- Show copies of the gas safety certificates, EPCs and How to Rent guides provided to the tenant during their tenancy.
- Licence (or evidence that it's been applied for) if the property is a HMO.

When the court gets the claim, the court will write to the landlord or their representative to confirm that the claim has been served and the date of service, and send a copy of the claim to the tenant. The tenant will have 14 days, from the date of service. that the landlord has followed the to send a defence to the court with reasons why a possession order should not be made, a counterclaim, or ask for extra time to vacate due to 'exceptional hardship'. Exceptional hardship is not defined in law.

After 14 days, the court will send the landlord either a copy of the tenant's defence (if any) or a form to fill in to ask the court to make a possession order if the tenant sends no defence.

If the tenant applies to postpone possession because of exceptional hardship and the court accepts this, the court may give the tenant up to 6 weeks to leave the property (instead of the usual 14 days). If the tenant has serious grounds for defence, the judge is likely to set a court hearing, after which he will decide on whether to award the possession order.

If the tenant does not file a defence. the landlord will have 3 months to fill in the form to ask the court to make a possession order, or their claim will be put on hold. The judge must make an outright order if they are satisfied correct procedure and is entitled to possession. A court hearing is not usually required, and the tenant must leave the property by a specified date.

If a possession order is granted by the court, but the tenant does not leave by the date specified, the landlord can apply to the court for a warrant or writ of possession. Once this is processed, a county court bailiff or High Court Enforcement Officer (HCEO) will enforce the warrant or writ and carry out the eviction. The bailiff or HCEO must usually provide at least 14 days' notice of the eviction date. The tenant can apply to court to temporarily stay a warrant of possession before the eviction is due to take place if they can show that they would experience exceptional hardship if the eviction were not delayed.

A landlord can issue a Section 21 notice if their tenant has an assured shorthold tenancy, provided that it is not within the first four months of the tenancy...

HOW WE CAN HELP

If a landlord makes any mistakes or omissions in either the service of the Section 21 notice or the application to court, the judge is likely to dismiss the application, which may mean that they have to ask for a hearing or start the process again. That is why it is advisable to get a legal to advice on the strict procedure that needs to be followed to ensure the notice and any court claim are valid.

If you are a landlord or a tenant and require advice and assistance with bringing or defending a claim for possession, please do not hesitate to Laura Colebrook in our Dispute Resolution team on E: l.colebrook@thpsolicitors.co.uk or T: 0118 338 3270.

DON'T MISS THE SDLT BOAT!

PROPERTY BUYERS COULD SAVE THOUSANDS IN TAX IF THEY COMPLETE BEFORE SDLT 2025 DEADLINE

It has been a year since the Chancellor announced a temporary increase in the Stamp Duty Land Tax (SDLT) threshold, which reduced the amount of tax many purchasers paid for their residential property.

The initiative has helped lots of ouyers to get on the property adder by reducing some of the costs associated with a residential property purchase. In fact, according to Rightmove, the cut meant that a chird of all homes for sale in England pecame exempt from stamp duty. lowever, the initiative will only remain place until 31 March 2025, with the DLT thresholds as follows:

- no tax to be paid on properties up to the value of £250,000.
- a threshold for first-time buyers of up to £425,000 applicable to properties worth up to £625,000.

rom 1 April 2025, the SDLT nresholds will revert to the following:

- no tax to be paid on properties up to the value of £125,000.
- a threshold for first-time buyers of £300,000 applicable to properties worth up to £500,000.

As the 2025 SDLT change will bring far more properties into the bracket where a portion of the value of the property is subject to 5% stamp duty purchasers who complete before the deadline could save as much as £2,500 in SDLT and first-time buyers could benefit up to £11,250. As property transactions take an average of 3-6 months to complete, it's worth bearing in mind these impending changes when doing your property purchase calculations, as a property completion date that falls ifter 31 March 2025 deadline could esult in a significantly higher tax purden.

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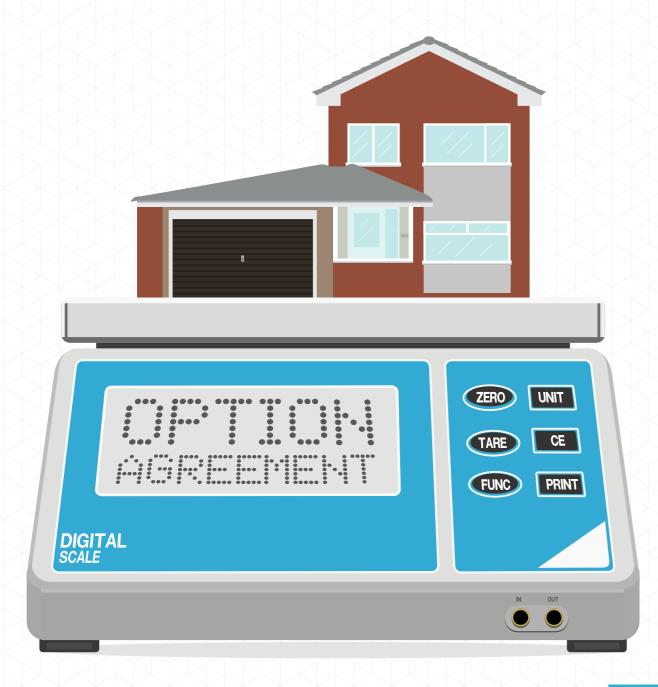
SDLT 2025

HOW WE CAN HELP

THP Solicitors Residential Property team is one of the largest in the Thames Valley and is focused on service, communication and a common-sense approach to getting the job done with as little stress as possible for everyone involved. For further information or legal advice, please contact our Residential Property team at Lower Earley T: 0118 975 6622 or Henley T: 01491 570 900.

WEIGHING UP YOUR OPTIONS

The ongoing housing shortage, and government relaxation of planning rules in an attempt to encourage building, is resulting in more landowners being approached by developers / house builders offering to promote land for residential and /or commercial development. Option Agreements are a popular way of structuring an offer or potential development between parties. Frances Watts explains...



We are seeing an influx of landowners being approached by developers who offer to try and obtain planning permission for development of their land in return for the right to purchase the land at a once they have obtained planning permission.

This arrangement would be formalised in an Option Agreement which is a binding contract between a landowner and a developer where the developer has the opportunity to purchase land from the landowner within an agreed time frame. Option Agreements are often used by developers wishing to secure the right to buy land once they have obtained planning permission.

Before an Option Agreement is entered into, most developers will wish to conduct pre-contract enquiries into the land to determine if there are any restrictions or other matters which will prevent or interfere with the intended proposals to develop the land.

The advantage of an Option Agreement for the landowner is that the developer will apply for the grant of planning permission at their own cost and risk. Any legal costs the landowner may incur are usually met by the developer. This allows landowners to propose their land for development without having to go through the costly process of obtaining planning permission themselves. Landowners can also take advantage of the experience and skills of the developers when it comes to obtaining planning permission, potentially increasing the chances of the development going ahead.

Conversely, the risk to the landowner of entering an Option Agreement is that it does not guarantee a sale at the end of the option period. As they will be entering into an agreement for a number of years, this will

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restrict the landowner from selling the property to any other interested party without the guarantee of a sale at the end of the option period.

There are no standard commercial terms for an option, and this will be dependent upon a number of factors. Both parties should take professional advise on the terms from a land agent or surveyor.

Once the developer is satisfied with the feasibility of the proposed development, they can trigger the purchase of the property by exercising the option, making it obligatory for the landowner to sell to them on the terms set out in the agreement. Note, whilst the developer can choose to exercise their option to purchase the land, there is no actual obligation on them to proceed with the purchase.

If the parties agree a conditional contract, a developer will be compelled to purchase the property once planning permission is granted, which can give a landowner greater comfort that a developer will proceed.

Once the land has been developed, it will have an increased market value - so landowners may also want to think about methods by which they may share in the developer's profits or uplift in the value of their land even after they have parted ways, known

as Overage Agreements. For an Overage Agreement to be effective, the correct legal framework will need to be put in place and there are many considerations that will need to be negotiated.

HOW WE CAN HELP

THP have advised on numerous development and regeneration transactions, assisting landowners and land promoters looking to realise the value of their estate. and commercial property investors looking to invest capital. There has been a definite increase in clients taking options or entering into conditional contracts to acquire land for development.

Option Agreements can offer significant opportunities to both developers and landowners alike, but careful drafting is required to avoid potential pitfalls. Whether you are a landowner seeking to maximise the value of your land, or a developer looking to explore the viability of a project before committing to buy the land, the experienced Commercial **Property team at THP Solicitors** can assist with all aspects of Option Agreements, as well as other contract options. We offer a tailored legal service for all sizes and types of real estate transaction, from large mixed-use schemes to small bespoke residential or industrial developments. The advice we give is clear, timely and above all, practical.

For more information please contact Frances Watts in our **Commercial Property team on** E: frances@thpsolicitors.co.uk or T: 0118 920 9499.

PROTECTING WHAT YOU LOVE

Contact our Wills, Trusts and Estate Administration lawyers for a confidential discussion about how we can help.

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